



CITY OF NEWTON, MASSACHUSETTS

Department of Planning and Development

Setti D. Warren
Mayor

Telephone
(617)-796-1120

TDD/TTY
(617) 796-1089

Telefax
(617) 796-1142

Public Hearing Date:	June 22, 2010
Land Use Action Date:	July 20, 2010
Board of Aldermen Action Date:	September 7, 2010
90-Day Expiration Date:	September 20, 2010

DATE: June 18, 2010

TO: Board of Aldermen

FROM: Candace Havens, Interim Director of Planning and Development
Alexandra Ananth, Senior Planner

SUBJECT: **Petition #140-10, ANOTHER CAFÉ FIORELLA, INC./MICHAEL J. PENTA, SUSAN SGARZI PENTA & ANGELO D. PAOLINI, TRUSTEES OF THE SMC TRUST** for a SPECIAL PERMIT/SITE PLAN APPROVAL/EXTENSION OF NONCONFORMING USE to expand an existing restaurant from 64 to 114 seats and to waive the side setback requirement for a parking facility of greater than five stalls at **187 NORTH STREET**, Ward 3, on land known as Sec 21, Blk 12, Lot 10, containing approx 24,108 sq ft of land in a district zoned MANUFACTURING. Ref: Sec 30-24, 30-23, 30-21(b), 30-19(h)(1), 30-19(m) of the City of Newton Rev Zoning Ord, 2007.

CC: Mayor Setti D. Warren

The purpose of this memorandum is to provide the Board of Aldermen and the public with technical information and planning analysis which may be useful in the special permit decision making process of the Board of Aldermen. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Land Use Committee of the Board of Aldermen will want to consider in its discussion at a subsequent Working Session.



EXECUTIVE SUMMARY

The subject property consists of a 24,108 sq. ft. lot currently improved with a restaurant and a parking facility. The petitioners have operated Fiorella's, an Italian themed restaurant, for approximately ten years at the current location with 64 restaurant seats. The petitioners are now proposing to construct an addition on to the rear of the existing building in order to expand the number of seats in the restaurant from 64 to 114. The existing restaurant is a legal nonconforming use in a manufacturing zoned district as a restaurant has operated on-site for many years. As the petitioners are proposing to expand the number of seats they must obtain a special permit to expand the nonconforming use.

The existing parking lot is considered legal nonconforming with respect to landscaping, lighting, and bicycle requirements. The proposed expanded use requires 43 parking spaces (114 seats and 15 employees on the largest shift) and submitted plans show 43 parking spaces. Although the petitioners do not need a parking waiver to increase the number of seats, proposed plans show a slightly expanded parking facility that locates parking spaces in the south side setback, which also require a special permit. *As the petitioners are proposing to increase (almost double) the intensity of the use without increasing the number of parking stalls, the Planning Department recommends the petitioners develop and submit a parking management plan in order to insure that parking is adequately managed so as not to impact the surrounding neighborhood.*

I. SIGNIFICANT ISSUES FOR CONSIDERATION

When considering this request, the Board should consider:

- Whether the proposed expanded nonconforming restaurant use will be substantially more detrimental to the surrounding neighborhood than the existing restaurant.
- Whether literal compliance with the parking regulations is impracticable due to the nature of the use, of the location, size, width, depth, shape, or grade of the lot, or that such exceptions would be in the public interest, or in the interest of safety or protection of environmental features.

II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Neighborhood and Zoning

The subject property is located just south of the Newton-Waltham-Watertown city lines. The subject property is located in a Manufacturing Zone though there is a Public Use, Single Residence 3, and Multi-Residence 2 district in close proximity. The restaurant is bordered to the north and south by commercial establishments (including a tanning salon and auto upholstery shop) and a cemetery is located across North Street.

B. Site

The site is relatively level and includes an approximately 2,056 sq. ft. building and a bituminous asphalt parking area for 53 cars. The existing building is a one-story concrete/stucco structure. A dumpster is located in the northeast corner of the lot and is screened with chain link fencing. The restaurant currently has a small fenced outdoor patio area located on the northwest corner of the lot. The petitioners have stated that the equivalent number of seats are taken off-line indoors when the patio area is in use.

III. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

The subject property will continue to be used as a restaurant. The proposed addition would increase the seating from 64 seats to 114 seats. The petitioners are able to meet the City's parking requirement with existing parking on-site.

B. Building and Site Design

The new addition is proposed to be 1,526 sq. ft. on one-story, bringing the restaurant to 3,582 sq. ft., and would include 114 seats. The addition will be stucco-faced concrete block with a slightly sloped rubber roof. The petitioners are also proposing a 4 ft. wide walkway along the rear and south side of the building and a ramp will offer access from proposed new handicap parking spaces.

C. Parking and Circulation

The petitioners are proposing to narrow the primary access drive to 20 feet and to shift the access slightly south of the existing entrance, to repave the parking area, and to add an approximately 5-7 foot landscaped area around much of the parking lot. The petitioners are expanding the parking area slightly to the south in order to make the parking lot more conforming. Landscape screening in this area should sufficiently screen neighbors from such expansion.

The existing parking lot is considered legally nonconforming and the petitioner is still not able to meet all requirements including landscaping and lighting, for which they are considered grandfathered. The petitioners are proposing to locate a bike rack at the front of the property and the petitioners are able to meet handicap parking requirements. *The Planning Department notes that the petitioner should clarify at the public hearing if they will be closing the second curb cut along North Street just north of the restaurant building as it is not clear from submitted plans.*

Although the petitioners are able to meet the number of parking stalls required under the City's Zoning Ordinance, the Planning Department is concerned that the petitioners are nearly doubling the number of restaurant seats and greatly increasing

the intensity of the use without adding additional parking. *The Planning Department recommends the petitioners develop a parking management plan prior to being scheduled for a Working Session in order to insure that parking is adequately managed so as not to impact the surrounding neighborhood. Such a plan might encourage carpooling for employees, an arrangement for employee parking at a nearby site with differing peak hours, and signage directing customers to park along North Street and not at abutting properties should the Fiorella's lot be full.*

D. Landscape Screening

The petitioners submitted a landscape plan for the site. Although it appears the petitioner is proposing a dense evergreen screen around the parking area, the Planning Department notes the size at install is not noted on the plan and should be revised prior to the Working Session. The Planning Department also notes that there is a lack of street trees in front of the restaurant and recommends the petitioner consider adding a street tree along their frontage as a public benefit.

IV. TECHNICAL REVIEW

- A. Technical Considerations (Section 30-15). The Zoning Review Memorandum, dated May 11, 2010 (*SEE "ATTACHMENT A"*), provides an analysis of the proposal with regards to zoning. The petitioners must seek special permits to expand a nonconforming use in the manufacturing district and to allow for parking in the south side setback.
- B. Engineering Division Review. The Engineering Division reviewed the proposed site plan and notes a few minor issues that should be addressed prior to the issuance of a building permit (*SEE "ATTACHMENT B"*).
- C. Fire Department Review. The Newton Fire Department reviewed and approved the proposed site plan for fire department accessibility (*SEE "ATTACHMENT C"*).

V. ZONING RELIEFS SOUGHT

Based on the completed Zoning Review Memorandum the petitioner is seeking approval through or relief from:

- 30-19(h)(1) & 30-19(m) to allow for parking in the south side setback; and
- Section 30-21(a)(2)(a) & 30-21(b), to expand a nonconforming use.

VI. PETITIONERS' RESPONSIBILITIES

Prior to being scheduled for a working session the petitioners should submit a parking management plan to the Planning Department for review and approval, and revise the landscape plan as noted. The Planning Department also notes that the petitioners should

clarify if they will be closing the second curb cut in front of the restaurant as it is not clear on submitted plans.

ATTACHMENTS

- ATTACHMENT A: Zoning Review Memo dated May 11, 2010*
- ATTACHMENT B: Engineering Division Review Memorandum dated June 16, 2010*
- ATTACHMENT C: Fire Department Review Memorandum dated May 17, 2010*
- ATTACHMENT D: Land Use Map*
- ATTACHMENT E: Zoning Map*

Zoning Review Memorandum

Dt: May 11, 2010

To: John Lojek, Commissioner of Inspectional Services

Fr: Eve Tapper, Chief Zoning Code Official *ET*
Candace Havens, Acting Director of Planning and Development

Cc: Steve Buchbinder, representing Remon M. Karian, Fiorella's Restaurant
Ouida Young, Associate City Solicitor

RE: Request to expand an existing restaurant.

Applicant: Remon M. Karian, Fiorella's Restaurant	
Site: 187 North Street	SBL: Section 21, Block 12, Lot 10
Zoning: MAN	Lot Area: 24,108 square feet
Current use: 64-seat restaurant	Proposed use: 114-seat restaurant

Background:

The subject property consists of a 24,108 square foot lot currently improved with Fiorella's Restaurant and a parking lot. The applicant is proposing to construct an addition onto the existing building to expand the number of seats in the restaurant from 64 to 114. The following review is based on plans and materials submitted to date as noted below.

Plans and materials reviewed:

- Letter from Attorney Stephen J. Buchbinder, dated February 19, 2010
- Letter from Attorney Stephen J. Buchbinder, dated April 22, 2010
- "Area Plan of Land Newton, Massachusetts at #187 North Street," dated April 21, 2010, neither signed nor stamped by a licensed professional
- "Proposed Site Plan, Newton, Massachusetts, Showing Proposed Conditions at #187 North Street," dated April 21, 2010, neither signed nor stamped by a licensed professional
- "Topographic Site Plan Newton, Massachusetts, showing conditions at #187 North Street," dated February 18, 2010, signed and stamped by Joseph R. Porter, Professional Land Surveyor
- Affidavit from Robert L. Scafidi, dated March 19, 2010
- Affidavit from Michael J. Penta, dated March 19, 2010
- Sheet A-1, "Fiorella's Restaurant, Proposed 50 seat addition, 187 North Street, Newton, MA," dated 12-21-2009, 1-29-2010 and 4-19-2010, signed and stamped by C. George Elanjian, Registered Architect

Administrative determinations:

1. The subject property is located in the Manufacturing zoning district. The existing restaurant is a legally nonconforming use. The subject application proposes to expand the restaurant. The proponent must obtain a special permit from the Board of Aldermen to expand a nonconforming use under Sections 30-21(a)(2)(a) and 30-21(b) of the Newton Zoning Ordinance.

2. The applicant submitted two sworn affidavits stating that the existing parking lot on the site has remained in the same configuration for at least 35 years. Since the City adopted dimensional standards for parking facilities in 1977 (33 years ago), these affidavits are acceptable evidence to consider the existing parking lot legally nonconforming with respect to the landscaping, lighting and bicycle parking requirements under Sections 30-19(i), (j), and (k). However, the affidavits offer no evidence regarding the number of parking spaces or the dimensions of those parking spaces over the last 35 years. Therefore, the existing lot is not legally nonconforming with respect to the number of parking spaces nor the dimensional standards as required in Sections 30-19(d) and 30-19(h), respectively.
3. Per Section 30-19(d)(13), the proposed use requires 43 parking spaces (see chart below). The petitioner proposes to continue using an outdoor patio for seating when the weather permits. According to the petitioner, the seats on this patio will not increase the total number of seats at the restaurant. Instead, when the patio is use, a section of interior seats will be taken out of service in order to keep the total number of seats to a maximum of 114.

Use	Required per Section 30-19(d)	Proposed Use	Proposed Parking Requirement
Restaurant	1 space/3 seats and 1 space/3 employees	114 seats and 15 employees	$(114/3=38)+(15/3=5)=$ 43

4. The submitted plans show a parking lot with 43 parking spaces. As noted above, the existing parking facility is legally nonconforming in many respects. However, the proposed plans show a slightly expanded parking facility that locates parking spaces in the side setback on the south side of the site. Section 30-19(h)(1) prohibits parking in the side setback without approval of a special permit from the Board of Aldermen under Section 30-19(m).
5. Section 30-19(h)(2)(c) lays out the number of handicapped accessible parking spaces required. In the Newton Zoning Ordinance, this figure is based upon the number of parking spaces in a parking facility. Under the proposed parking configuration, three handicapped accessible stalls are required. The proposed site plan depicts three handicapped stalls. However, the two closest to the street are each only 11.5 feet wide where 12 feet is required by the Ordinance. The proponent has agreed to revise the plans to show three compliant handicapped accessible spaces and will submit the revised plans with the special permit application.

6. See "Zoning Relief Summary" below:

Zoning Relief Summary		
Ordinance		Action Required
	Use	
§30-21(a)(2)(a) and 30-21(b)	Expand a nonconforming use	SP per §30-24
	Parking	
§30-19(h)(1) and 30-19(m)	Allow parking in the side setback	SP per §30-24

**CITY OF NEWTON
ENGINEERING DIVISION**

ATTACHMENT B

MEMORANDUM

To: Alderman Ted Hess-Mahan, Land Use Committee Chairman

From: Frank Nichols, P.E., Project Engineer

Re: Special Permit – **187 North Street (Fiorellas)**

Date: June 16, 2010

CC: Lou Taverna, P.E., City Engineer (via email)
John Daghljan, Associate City Engineer (via email)
Candice Havens, Acting Director of Planning (via email)
Linda Finucane, Associate City Clerk (via email)
Alexandra Ananth, Planner (via email)

In reference to the above-referenced site, I have the following comments for plan entitled:

***Proposed Site Plan showing Proposed Conditions
187 North Street (Fiorellas)
Newton, MA
Prepared by: VTP Associates, Inc.***

Executive Summary:

The proposal is to expand the existing restaurant, increase and slightly modify the existing parking area as well as add some landscaping and other ancillary items. The project also proposes the installation of two (2) separate on-site subsurface drainage systems and a slight shifting of the curb opening along North Street.

Sewer:

The increase in seating may require the installation of (or the increase in size of any existing) an exterior grease trap pursuant to the Massachusetts State Plumbing Code. Discussion with the City's Plumbing Inspections Department is recommended.

Water:

The proposed increase in seating would not require an upgrade in the potable water service. However, it is recommended that the City of Newton Fire Department be consulted relative to the need for, or possible improvement of any fire protection system.

Drainage:

Although not required under Engineering Division Policy, the Applicant proposes the installation of two (2) separate subsurface recharge systems consisting of catch basins and concrete recharge chambers surrounded by drainage stone. However, clarification as to stormwater flow direction is needed relative to the extended parking area along the southern property line. In the area proposed for parking expansion stormwater currently flows in a southerly direction (away from the proposed catch basins). It is recommended that the expanded parking area be graded to direct runoff towards the newly installed catch basins.

General:

1. No excavation is allowed within any City right-of-way between November 15th and April 15th. If an emergency exists or there are extenuating circumstances, Applicant may seek permission for such work from the City Engineer. If permission is granted, special construction standards will be applied. Applicant or Applicant's representative must contact the City of Newton Engineering Department prior to start of work for clarification.
2. The contractor needs to notify the Engineering Division 48-hours in advance and schedule an appointment to have the drainage system and curbing installation inspected. The drainage system must be fully exposed for the inspector. Once the inspector is satisfied, the system may then be back-filled.
3. The applicant will have to apply for an Install Curb / Sidewalk Permit as well as a Trench Permit with the DPW prior to installation.
4. Prior to the issuance of an Occupancy Permit, an As-Built Plan shall be submitted to the Engineering Division in both digital format and in hard copy. The plan must show all utilities and drainage (including ties), any easements and final grading.
5. If a Certificate of Occupancy is requested prior to all site work being completed, the applicant will be required to post a Certified Bank Check in the amount to cover the remaining work. The City Engineer shall determine the value of the uncompleted work.

Note: If the plans are updated it is the Applicant's responsibility to provide all City Departments which are involved in the review and permitting process with the latest drawings and correspondence.

This completes my review of the above-referenced project. If you have any questions or require additional information please feel free to contact me @ 617-796-1034.



CITY OF NEWTON, MASSACHUSETTS

FIRE DEPARTMENT HEADQUARTERS

1164 Centre Street, Newton Center, MA 02459-1584
Chief: (617) 796-2210 Fire Prevention: (617) 796-2230
FAX: (617) 796-2211 EMERGENCY: 911



Setti D. Warren
Mayor

Joseph E. LaCroix
Chief

Alderman Ted Hess-Mahan
Land Use Committee
Newton City Hall
1000 Commonwealth Avenue
Newton Centre, Ma 02459

May 17, 2010

Re: Fiorella's Restaurant
187 North Street

Dear Mr. Hess-Mahan,

The Newton Fire Department has reviewed the site plans for the Fiorella's Restaurant addition located at 187 North Street. This is to advise you that the Newton Fire Department has stamped the plans and approves the plans for fire department accessibility.

We will of course be reviewing the plans relative to Fire Prevention matters during the building permit process.

If you have any questions, please do not hesitate to call me at 796-2210.

Sincerely,

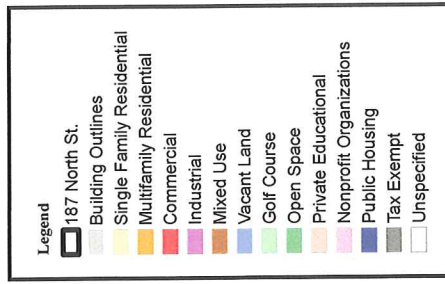
A handwritten signature in black ink, appearing to read "AK" followed by a large, stylized "BR".

Bruce A. Proia
Chief of Operations

Cc: Steve Buchbinder, LLP
Deputy Chief Michael Castro, Fire Prevention
✓ Candace Havens, Planning and Development

Land Use Map

187 North St.

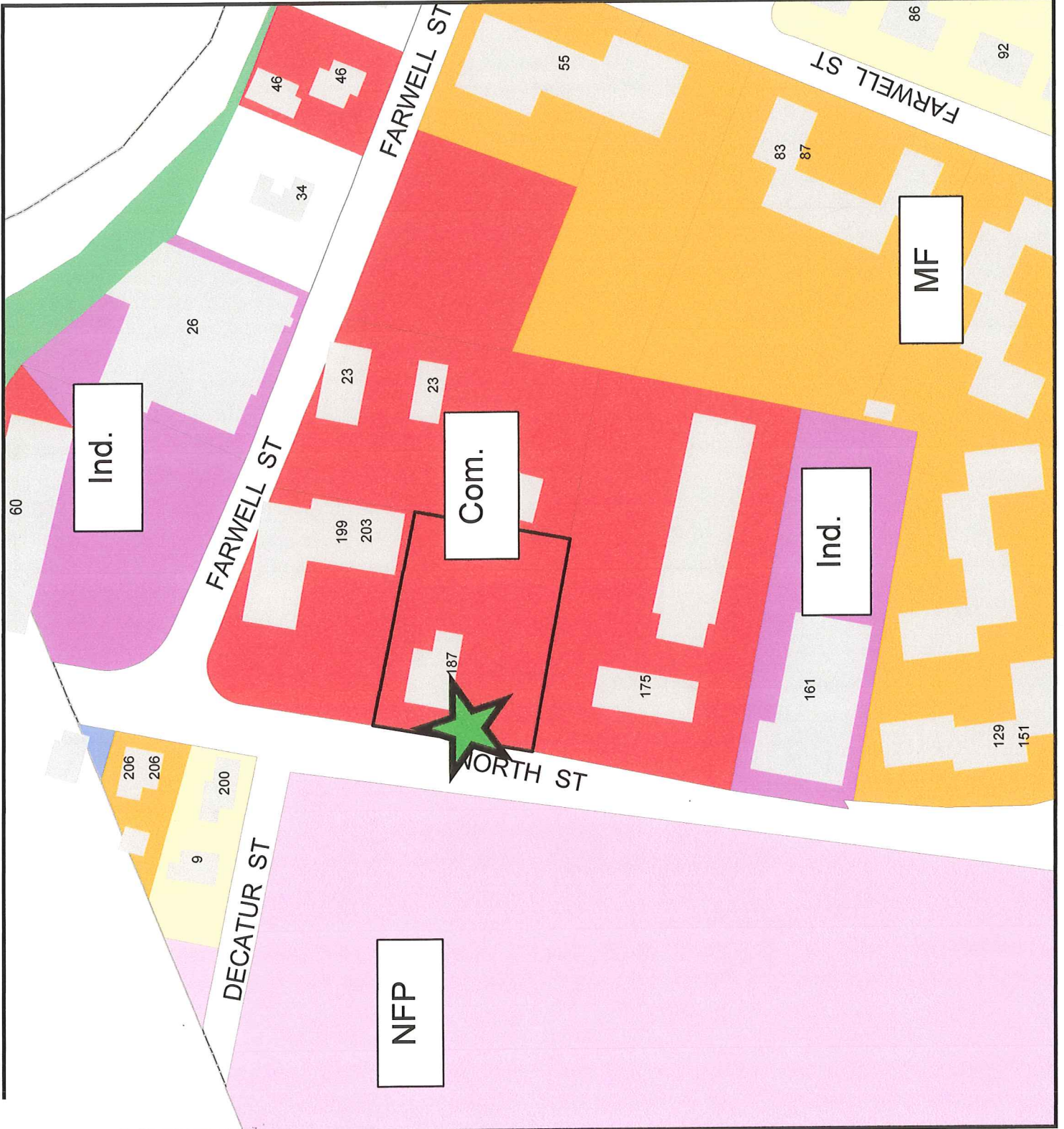


ATTACHMENT D

The information on this map is for informational purposes only. The City of Newton cannot guarantee the accuracy of the information. Each user of the information is responsible for determining its suitability for their own purposes. City departments approve applications based on the information provided.

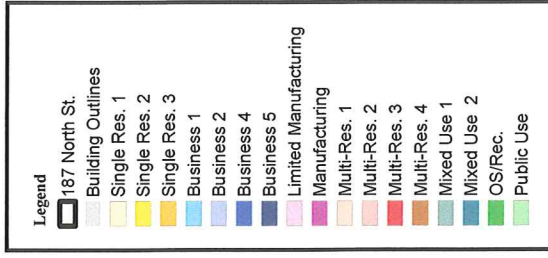


MAP DATE: Ju



Zoning Map

187 North St.



ATTACHMENT E

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MAP DATE: Jun

